



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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April 27, 2015

Mr. Jerry D. Johnson - #174419  
Pendleton Correctional Facility  
4190 West Reformatory Road  
Pendleton, Indiana 46064

*Re: Formal Complaint 15-FC-103; Alleged Violation of the Access to Public Records Act by the Elkhart County Jail*

Dear Mr. Johnson,

This advisory opinion is in response to your formal complaint alleging the Elkhart County Jail ("Jail") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Jail has not responded to your complaint despite an invitation to do so on March 23, 2015. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 16, 2015.

## **BACKGROUND**

Your complaint dated March 2015 alleges the Elkhart County Jail violated the Access to Public Records Act by failing to provide the records you requested.

On or before March 3, 2015, you requested from the Jail a copy of the visitation history of a named individual. As of the date of the filing of your request, you had not received any information responsive to your request.

## **ANALYSIS**

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Elkhart County Jail is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the



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right to inspect and copy the Jail's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Without the benefit of a response from the Jail, I do not have any argument as to why the record you seek has not been made available. Although there may be an exception to disclosure (such as security of inmates), it has not been identified by the Jail. Pursuant to Ind. Code § 5-14-5-5, a public agency must cooperate with this Office in a public access violation allegation. To the extent a record exists, it should be either released to you, or an exception to disclosure be specifically cited by reference.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Elkhart County Jail has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written over a horizontal line.

Luke H. Britt  
Public Access Counselor